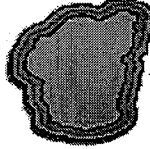
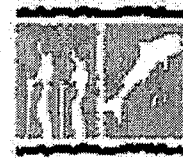


# Sierra Forest Legacy

Protecting Sierra Nevada Forests and Communities



**Tahoe Area  
Sierra Club  
Group**



**KEEP  
TAHOE  
BLUE**

League to Save Lake Tahoe

December 1, 2008

**Via Email & Regular Mail**

California Regional Water Quality Control Board, Lahontan Region  
2501 Lake Tahoe Blvd.  
South Lake Tahoe, CA 96150  
Attn: Anne Holden - aholden@waterboards.ca.gov

**Subject:** Supplemental Comments on Proposed Waiver Related to Vegetation Management Activities in the Lake Tahoe Basin and Adoption of a Memorandum of Understanding between TRPA and Lahontan

Dear Ms. Holden:

We submit the following supplemental comments on behalf of the Sierra Forest Legacy, the Tahoe Group of the Sierra Club and the League to Save Lake Tahoe. We incorporate by reference all of our prior comments on Lahontan's proposed action.

## **I. INTRODUCTION**

Since our last comments, Lahontan has made certain changes to the proposed Waiver and Memorandum of Understanding ("MOU"). These changes appear to reduce further Lahontan's authority to oversee regulation of fuel reduction projects in the Lake Tahoe Basin with the potential to discharge pollutants. Thus, we continue to object to the project as currently proposed.

Lahontan's revisions to its Initial Study/Negative Declaration (IS/ND) add information about TRPA's monitoring requirements, which Lahontan states will control future waste discharge permitting in the Basin. As set forth below, we do not believe that Lahontan's references to TRPA's code sections provides adequate information on how project monitoring under the waiver meets the requirements of the California Water Code, nor does this present an adequate discussion of monitoring mitigation as required by the California Environmental Quality Act ("CEQA").

As set forth below, we believe the proposed project violates CEQA in a number of ways including by failing to prepare an EIR equivalent document, despite the potential for this project to

have significant impacts. Further, the IS/ND and accompanying CEQA documents still fail to adequately describe the regulatory setting that currently exists regarding regulation of waste discharge from fuel reduction projects and the specific aspects of this project as it will be implemented by TRPA and other agencies, including the Forest Service, that have concluded MOUs with TRPA regarding oversight jurisdiction. In particular, Lahontan continues to provide no information regarding the regulatory programs of TRPA and the Forest Service that are to substitute for Lahontan's regulation. Further, it is our understanding that TRPA and the Forest Service are currently working on a revision to their existing MOU, which is also not discussed.

Further, the revised Waiver, MOU and accompanying CEQA documents still do not provide an adequate discussion of how the existing waiver and MOU, which Lahontan adopted in 2007, currently operate to protect water quality in the Basin. Just in the last two weeks, Lahontan has provided copies of some of the monitoring reports submitted to Lahontan over the last year pursuant to the 2007 waiver. At this time we are still reviewing these documents.<sup>1</sup> However, we note that Lahontan's current proposal to repeal the terms of the existing waiver for projects in the Basin contains *no discussion or analysis* of these reports or the efficacy of Lahontan's current oversight of monitoring by regulated entities within the Region or the Tahoe Basin.

We repeat our prior comments that CEQA requires a full discussion of the current environmental and regulatory setting, the project being proposed, and the potential impacts that may occur.

We also believe that Lahontan has an obligation under CEQA to consider a project alternative in which primary oversight authority is transferred to TRPA but only on the condition that waiver conditions, including monitoring requirements, similar to those existing in the current waiver are retained. This alternative must be considered as it meets the project purpose of avoiding overlapping regulation while meanwhile retaining the existing waiver conditions and monitoring found to be necessary by Lahontan in 2007 to avoid significant impacts to water quality in the Tahoe Basin. See Pub. Res. Code §§ 21002.1; *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 400-403.

Finally, our prior comments noted that the proposed Waiver violates the Basin Plan because it assumes, without any evidence, that TRPA's regulation will meet Basin Plan requirements. However, as a factual matter, the Basin is presently out of compliance with water quality thresholds and neither the Waiver, MOU or any other relevant documents demonstrates what plan TRPA has for meeting these thresholds. What is TRPA's monitoring plan to ensure achievement of Basin Plan thresholds for pollutants currently causing impairment of the Lake's clarity standard? How will TRPA regulate Forest Service projects? As discussed below, the IS/ND contains no discussion of the implications of TRPA's current MOU with the Forest Service, or any discussion about TRPA's apparent intent to revise its MOU with the Forest Service or how such revision will affect TRPA's

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<sup>1</sup>We have been receiving copies of these records only in the last two weeks. We understand that at this time, Lahontan has still not evaluated the data in the reports.

oversight of Forest Service projects in the Basin.

In addition, we understand that the State Water Quality Control Board's is currently in the midst of discussions with the U.S. Forest Service regarding the effectiveness of its BMP evaluation program and how that program may be improved. Because it is likely that TRPA will not oversee the majority of Forest Service projects, and will instead rely on the Forest Service's BMP Evaluation Program, the State Board process is directly relevant to the proposed Waiver and MOU for the Basin. However, neither this process, nor the BMPEP are discussed in any way in the project documents.

In sum, the combination of these informational deficiencies, as well as those noted in our prior comments submitted on September 17, 2008, render Lahontan's environmental review of this project inadequate.

Lahontan's recent revisions to the project suggest that Lahontan is not following its directive under the Water Code to act as the primary regulating agency of water quality in California. This concern is particularly highlighted by Lahontan's responses to the Governor's Proclamation and Tahoe Fire Commission recommendations. We note again that at present there are no conditions that accompany the proposed Waiver, no discussion of how TRPA intends to regulate fuel reduction activities and every indication that there will be little if any regulatory oversight over foreseeable future fuel reduction activities in the Basin.

For these reasons, we ask that the Lahontan Board not approve the proposed waiver and MOU and instead work with staff and TRPA to come up with a more protective – and informed – working arrangement to ensure that the precious environmental values in the Basin are preserved.

## **II. SUPPLEMENTAL COMMENTS ON THE PROPOSED ACTION**

### **A. The Project Documents Still Do Not Provide an Adequate Discussion of How the Waiver's Monitoring Requirements Meets the Requirements of the Water Code or CEQA**

In our prior comments, we noted that the waiver lacked any discussion regarding monitoring that is required under the Water Code and which was adopted by Lahontan in 2007 to ensure that its waiver for fuel reduction activities avoided potentially significant impacts to water quality under CEQA. As discussed below, the revisions to the project documents do not remedy these inadequacies.

#### **1. The Existing Waiver is Designed to Ensure that Lahontan Retain Oversight over the Effectiveness of Mitigation Measures Implemented to Avoid Significant Water Quality Impacts in Fuel Reduction Projects.**

The Lahontan existing waiver – which currently covers projects in the Tahoe Basin – requires all dischargers under waiver categories 2-5 to prepare and submit to Lahontan an Inspection Plan for

conducting implementation, forensic and effectiveness monitoring.<sup>2</sup> The Inspection Plan must be designed to ensure that the management measures are installed and functioning prior to precipitation events (implementation monitoring), that the measures were effective in controlling sediment discharge sources throughout the winter period (effectiveness monitoring), and that no new sediment sources occur as a result of project implementation (forensic monitoring).

The Inspection Plan requires a monitoring point site map, which shall include visual and photo-point monitoring points. Forensic photo-point monitoring shall include photos of sediment sources and streambed conditions immediately downstream of areas where sediment discharge occurred.<sup>3</sup>

The existing waiver sets forth requirements for implementation, forensic and effectiveness monitoring. For routine projects, implementation monitoring is required. If implementation monitoring reveals that management measures were not installed, or were installed but are determined to be ineffective, the discharger must inform Lahontan by documenting the problem and taking corrective action to ensure that the project is in compliance with the applicable Waiver criteria and conditions.

For projects that contain constructed watercourse crossings, ground based equipment operations within stream zones or on slopes over 30%, winter operations, or road or landing construction within 500 feet of stream zones, detailed effectiveness and forensic monitoring is required. This regulatory structure recognizes the potential for projects with one or more of these criteria to discharge significant amounts of sediment into watercourses and the need for effectiveness and forensic monitoring to ensure that mitigation measures put in place to avoid these impacts are functioning effectively. *See Collins Memo, submitted with these comments.*

Forensic monitoring must be conducted during the winter period. Forensic monitoring requires sites to be inspected and photographs taken (as outlined in the Inspection Plan submitted with the Waiver application) following storm events based on significant amounts of precipitation.<sup>4</sup>

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<sup>2</sup>For projects that avoid sensitive areas and do not involve intensive operations, no monitoring is required under the existing waiver.

<sup>3</sup>Implementation monitoring requires a discharger to take pre-project photos at specific locations to facilitate comparison of pre- and post-project site conditions. Implementation monitoring requires a pre-winter inspection following completion of the project to assure that mitigation measures are in place and secure prior to the winter period. Where winter operations are conducted, an implementation inspection shall be completed immediately following cessation of winter operations to assure that management measures are in place and secure.

<sup>4</sup> The goal of winter forensic monitoring is to locate sources of sediment delivery (or potential delivery) in a timely manner so that rapid corrective action may be taken where feasible and appropriate. Winter forensic monitoring may also assist in determining cause and effect

Forensic monitoring requires photos at locations when a significant discharge of sediment is detected or when failed management measures cause or may cause the release of three or more cubic yards of sediment to watercourses. Photos of the stream and sediment source are also required where visible sediment deposits in a streambed are observed.

The waiver relies on forensic monitoring to correct situations where mitigation measures installed to avoid adverse water quality impacts have been shown to be ineffective. The waiver states that follow-up forensic monitoring inspections and photo-point monitoring shall be conducted weekly until corrective action is completed to repair or replace failed management measures and/or significant sediment discharges have ceased. Sites that are determined to be sediment sources during forensic monitoring shall be photographed prior to and following corrective action being implemented at the site.

The waiver also requires effectiveness monitoring to be conducted as soon as possible following the winter period. Effectiveness monitoring "shall be designed to determine the effectiveness of management measures in controlling discharges of sediment and in protecting water quality" and to "help to determine whether Waiver criteria and conditions, on a programmatic scale, are adequately protecting water quality and instream beneficial uses."<sup>5</sup>

Effectiveness monitoring shall continue until the discharger submits a Final Certification compliance report to Lahontan demonstrating that the projected and any necessary mitigation measures were completed in compliance with the waiver and all requirements of the applicable water quality control plan. The waiver also requires semi-annual reporting. Dischargers shall submit an Implementation Monitoring Report on January 15 of each year, and an Effectiveness Monitoring Report on July 15 of each year.

In sum, Lahontan's existing waiver provides detailed requirements for implementation, forensic and effectiveness monitoring, including requirements to take pre and post project corroborative photos, which allows Lahontan to retain oversight to ensure that mitigation measures designed to avoid significant water quality impacts are avoided. *See Collins Memo*. As discussed below, the proposed Waiver and MOU do not contain such requirements.

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relationships between hillslope activities, hydrological triggers and instream conditions. Forensic monitoring may be waived upon written notification from the discharger that significant environmental impacts would result from road system use in wintertime to access the visual and photo-point monitoring sites.

<sup>5</sup>Effectiveness monitoring shall include visual inspection and photo documentation of sites identified in the Inspection Plan. If the visual inspection reveals a significant management measure failure, a visual inspection of instream components (bank composition and apparent bank stability, water clarity and instream sediment deposition)'shall also be conducted and the conditions shall be documented.

## **2. The Revised Project Documents Do Not Clarify How TRPA's Monitoring Will Ensure that Future Projects Will Avoid Significant Impacts**

Lahontan's revised initial study for the Waiver/MOU states that the proposed waiver and MOU are consistent with these monitoring requirements of Water Code § 13269(a)(3) because TRPA will have its own monitoring requirements that will apply to fuel reduction activities in the Basin. The revised IS/ND states that TRPA's Code of Ordinances requires pre-approval field review, pre-harvest field review, and post-harvest field review for fuel reduction activities on private and U.S. Forest Service-administered lands, and that such monitoring not only meets the standards of the Water Code but also does not represent a substantial change from the detailed requirements, discussed above, of the existing waiver.

For several reasons, this response is inaccurate and/or inadequate.

First, as discussed below and in our prior comments, TRPA's existing MOU with the Forest Service exempts logging projects under 100 acres in size occurring on Forest Service lands from any TRPA oversight, including "substantial tree removal involving the use of heavy equipment" in SEZs or on other sensitive lands. *See* September 17, 2008 Comments, Exhibit 11.<sup>6</sup> Further, we understand that the Forest Service and TRPA intend to revise this MOU. This action could have substantial effects on which agency's regulatory process will oversee Forest Service projects. However, the project documents do not discuss this fact or how the Forest Service will regulate projects.

Second, as to private parcels over which TRPA retains jurisdictional authority, TRPA monitoring is only required in the specific situations for tree cutting projects conducted in SEZs using "innovative technology" vehicles and/or "innovative techniques" for the purpose of fire hazard reduction. *See* TRPA Code § 71.4.C.1.b.viii. This requirement does not cover a number of other situations such as logging operations on steep slopes or within 500 feet of SEZs, winter operations and landing construction found by Lahontan to warrant not only implementation, but also forensic and effectiveness monitoring in order to avoid significant impacts to water quality. *See also* Collins Memo.

Third, the TRPA monitoring requirement for "innovative techniques" in SEZs does not provide any information as to what kind of monitoring will actually be required to ensure that fuel reduction projects in SEZs will not cause significant adverse impacts on water quality in the Basin. Lahontan's Waiver/MOU and associated CEQA documents do not provide any information about what kind of monitoring will be required by TRPA, except to reiterate the TRPA code section's requirement that the SEZ not sustain "any significant damage to soil or vegetation." *See* TRPA Code § 71.4.C.1.b.viii.

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<sup>6</sup>The revised IS cites to TRPA code requiring monitoring for substantial tree removal projects. However, TRPA's existing MOU with the Forest Service specifically exempts substantial tree removal projects from TRPA review. *Id.*

As discussed above, the current waiver requires detailed monitoring for high risk projects, including photo-point monitoring to ensure that mitigation measures have been effectively implemented and are functioning to avoid adverse water quality impacts. These type of requirements are critical to ensure that project objectives to avoid significant impacts are being avoided, and to ensure that the oversight agency has the ability to corroborate this fact. *See Collins Memo.*

In contrast, we do not believe that the boilerplate assertion in the IS/ND that TRPA's monitoring will avoid significant impacts – simply because that is what the TRPA code states is supposed to happen – is sufficient to meet either the Water Code or CEQA's requirements that specific monitoring requirements be established to inform the public as to how water quality will be protected. *See Water Code § 13269(a)(3); Gray v. County of Madera* (2008) 167 Cal. App. 4th 1099, 1117-1118 (“[W]e conclude that here the County has not committed itself to a specific performance standard. Instead, the County has committed itself to a specific mitigation goal.”); *Environmental Planning and Information Center v. County of El Dorado* (1982) 131 Cal. App. 3d 350 (CEQA “has clearly expressed concern with the effects of projects on the actual environment upon which the proposal will operate” rather than the legal parameters under which agencies operate.)

Fourth, unlike the existing Lahontan waiver, the TRPA Code provides no mechanism to ensure that monitoring results showing that adverse impacts are occurring will be translated into effective action to correct the problem. *See TRPA Code § 71.4.C.1.b.viii* (“Along with the project proposal, adaptive management concepts *should* be applied to the monitoring plan. A monitoring plan must be submitted with all project proposals, including at a minimum: a list of sites and attributes to be monitored; specification of who will be responsible for conducting the monitoring and report; and a monitoring and reporting schedule”) (emphasis added.) This approach violates CEQA because it lacks any enforceable mechanism to ensure that monitoring as mitigation will ensure the avoidance of significant impacts.<sup>7</sup> *See also Collins Memo.*

Fifth, the revised IS/ND's reference to Chapter 32 of TRPA's Code of Ordinances does not address the issue at hand, which is project specific monitoring to ensure that fuel reduction activities are not having adverse impacts on water quality in the Basin. Instead, Chapter 32 addresses long term monitoring to address TRPA's compliance with Basin-wide thresholds. The results of any monitoring under this section would, at best, indicate that over time TRPA was not meeting its

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<sup>7</sup>A public agency must "provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures. Conditions of project approval may be set forth in referenced documents which address required mitigation measures or, in the case of the adoption of a plan, policy, regulation, or other public project, by incorporating the mitigation measures into the plan, policy, regulation, or project design." Pub. Res. Code § 21081.6 (b). The public agency must "adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation." *Id.* § 21081.6(a)(1).)

threshold requirements. It would not lead to effective mitigation or eliminate sources of pollutant discharge at the project level.

Finally, nothing in the record suggests that “communication” between Water Board and TRPA staff persons would result in monitoring results that would allow either agency to know whether mitigation measures were implemented and effective to avoid significant adverse effects. The revised IS states that such conditions include “notification requirements if a third party violates the term of any permit or project authorization.” The issue here, however, is not violation of permit terms, but rather the question whether the project *as approved* – including any accompanying mitigation measures – is avoiding adverse impacts on water quality through pollutant discharge. All the waiver language regarding coordination and discussion between the agencies is meaningless in the absence of a detailed monitoring program providing ongoing data about the effectiveness of mitigation that is implemented and whether water quality in the Basin is being adversely affected. *See Collins Memo.*

### **3. The Revised Project Documents Do Not Acknowledge that Lahontan Has Found the Forest Service’s BMP Evaluation Program to be Inadequate**

As discussed above, the current MOU between TRPA and the Forest Service exempts all logging projects under 100 acres in size from any TRPA oversight. As discussed in our prior comments, there are approximately 6,000 reasonably foreseeable fuel reduction treatments that will occur in the next decade in the Basin, totaling 68,000 acres. The average size of these treatments would be approximately 11 acres. However, the IS/ND do not discuss how many projects would be directly regulated by the Forest Service. The IS/ND also do not discuss the present intent of the Forest Service and TRPA to amend the MOU and the likelihood that such amendment would be for the purpose of expanding the Forest Service exemption for logging activities in the Basin.

Despite the fact that the U.S. Forest Service – and not TRPA – will address water quality impacts from fuel reduction projects in the Basin, the proposed Waiver and MOU provide no discussion or explanation about how the Forest Service intends to meet either the Water Code’s monitoring requirement or how Forest Service monitoring compares to the existing waiver requirements for implementation, forensic and effectiveness monitoring using pre and post-project visual and photo-points, with built in mechanisms to correct any adverse effects that are occurring. As noted, Lahontan has previously found that the Forest Service’s monitoring program is not adequate to ensure that water quality objectives are being met. *See September 17, 2008 Comment Letter, Ex. 13.*

The IS/ND for the proposed Waiver/MOU violates CEQA in failing to discuss the adequacy of the existing Forest Service monitoring program, much less the fact that TRPA may not in fact be the oversight agency on the majority of fuel reduction projects occurring on Forest Service administered land in the Basin. These are critical components of the project being considered, yet are neither discussed or even acknowledged, in violation of CEQA’s informational requirements. *See Rural Land Owners Assn. v. City Council of Lodi* (1983) 143 Cal. App.3d 1013, 1020 (CEQA



is intended to serve as "an environmental full disclosure statement.")

As stated above, it is our understanding that 1) TRPA is currently working to amend its MOU with the Forest Service regarding TRPA's regulatory oversight on forestry matters; and 2) the State Water Quality Control Board is currently in negotiation with the Forest Service regarding the inadequacy of the Forest Service's evaluation program for avoiding water quality impacts through the implementation of best management practices. Neither of these apparently ongoing processes is discussed or presented in the Waiver/MOU documents, yet each is potentially critical to whether the current Waiver/MOU have the potential to have significant impacts on water quality.<sup>8</sup>

As discussed in our prior comments, Lahontan puts the cart before the horse in proposing to delegate to TRPA primary regulatory oversight over fuel reduction projects in the Basin where such larger scale programmatic processes are still under consideration. Here both TRPA and the State Board are currently in negotiation regarding appropriate oversight over Forest Service projects, and such projects will constitute the majority of projects that will be subject to the waiver. Before these negotiations are completed, however, Lahontan proposes to waive its own oversight authority over these projects, without knowing what the actual result will be and without providing any discussion regarding the impacts of this transfer as part of the CEQA review process.

The purpose of monitoring is to insure that water quality objectives are being met as part of the waiver conditions. Here, the waiver includes no conditions or mechanism to insure that the environment will be protected as fuel reduction on approximately 68,000 acres over the next decade occurs. See Water Code § 13269(a)(2).

**B. The CEQA Documents Do Not Provide Adequate Information About the Existing Regulatory Setting or the Project that is Proposed**

As discussed in our prior comments, CEQA requires a full description of the environmental setting in which the project will occur. 14 Cal. Code Reg. § 15125; *San Joaquin Raptor v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 722-723. In addition, CEQA requires that the environmental review document contain a full and accurate description of the proposed project. See e.g. *Mira Monte Homeowners Assn. v. County of Ventura* (1985) 165 Cal. App.3d 357, 366; *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal. App.3d 818, 829-831; *County of Inyo v. UCB of Los Angeles* (1977) 71 Cal. App. 3d 185; 14 Cal. Code Reg. § 15124. We reiterate our incorporation of those comments.

Here, the IS/ND still does not provide adequate information about the environmental setting

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<sup>8</sup>It is our understanding that TRPA's execution of a new MOU with the Forest Service will not undergo public review or adopted pursuant to a public hearing. As discussed below, this process should be combined with Lahontan's Waiver/MOU project and considered as part of the larger project at issue, which is how to effectively streamline regulation of fuel reduction activities in the Basin while avoiding significant impacts to water quality in the Basin.

or the project. As discussed, the IS/ND repeals the existing waiver conditions that Lahontan currently applies to timber activities by replacing the current regulatory regime based on the existing waiver/MOU and replacing it with a different one. Under CEQA, analysis of this change requires a discussion of the current situation, including an assessment of how the Lahontan's current waiver process is functioning both in terms of workability and effectiveness *and* an assessment of how TRPA and the Forest Service currently process fuel reduction projects in the Basin. Each of these are components of the existing regulatory setting, which must be described under CEQA. This CEQA requirement makes particular sense given that there may be aspects of Lahontan's current process that warrant consideration as waiver conditions for the proposed Waiver, which might avoid the potential for significant impacts, as discussed in the next section below.

In addition, the project proposed will foreseeably result in TRPA and the Forest Service approving projects. Yet here, the CEQA documents for the project still do not consider how projects will be processed and monitored in the future as a result of the waiver and MOU approval. How will TRPA review projects that may be subject to conditional exemptions under TRPA's code pursuant to a host of MOU's with local jurisdictions? How will the TRPA regulate projects subject to Forest Service jurisdiction? How will the Forest Service process and monitor projects under its authority according to its existing MOU with TRPA?<sup>9</sup>

In the absence of information on the existing setting and undisputed components of project implementation, Lahontan is not in a position to assess the impacts of conferring primary regulatory authority over fuel reduction projects to TRPA.<sup>10</sup>

### **C. The CEQA Documents Do Not Consider a Reasonable Range of Alternatives**

CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. 14 Cal. Code Regs. § 15002(a)(1). The lead agency under CEQA must identify mitigation measures and alternatives to the project which may reduce or avoid the potential for significant impacts, thus accomplishing CEQA's basic statutory goals. *See Laurel*

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<sup>9</sup>As discussed above, TRPA's existing MOU with the Forest Service exempts the vast majority of fuel reduction projects occurring on Forest Service lands from any TRPA oversight, including "substantial tree removal involving the use of heavy equipment" in SEZs or on other sensitive lands.

<sup>10</sup>As set forth in our prior comments, "[t]he 'transfer' has the same effect as a substantive change in the waiver, except for here there is no information about the new permitting conditions between the action agencies and TRPA. This includes basic information regarding how TRPA will address monitoring, activities on steep slopes and within SEZs, exemptions or semi-exemptions from project review and granting of discharge prohibitions. Without any information regarding these project components, it is impossible for the public or any agency to gauge the impacts of the proposed action."

*Heights, supra*, 47 Cal.3d at 400-403; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564; Pub. Res. Code §§ 21002, 21002.1. This analysis of feasible mitigation measures and a reasonable range of alternatives is crucial to CEQA's substantive mandate that significant environmental damage be substantially lessened or avoided where feasible. Pub. Res. Code §§ 21002, 21081; 14 Cal. Code Regs. §§ 15002(a)(2) and (3). *Laurel Heights, supra*, 47 Cal.3d at 392, 404-405. CEQA requires government agencies to disclose to the public the reasons why they have approved a particular project resulting in significant environmental effects. 14 Cal. Code Regs. § 15002(a)(4). The CEQA process "protects not only the environment but also informed self-government." *Laurel Heights, supra*, 47 Cal.3d at 392.

We believe that given the importance of effective monitoring to avoid adverse water quality impacts from fuel reduction activities, Lahontan must consider a project alternative that eliminates repetitive permitting, *but retains the monitoring requirements of the existing waiver*. Here, Lahontan must analyze a project alternative where Lahontan confers primary jurisdiction to TRPA *on the condition that* TRPA assume Lahontan's monitoring requirements for high risk projects in the Basin, as set forth in Lahontan's existing waiver.

Consideration of this alternative would require analysis of information that is currently lacking from the CEQA documents including 1) an assessment of TRPA's capacity to implement monitoring and other regulatory controls over new fuel reduction projects; and 2) the effectiveness of Lahontan's current monitoring requirements in avoiding sediment and nutrient discharge into Tahoe's waters. TRPA can certainly provide information on the former issue, while the Inspection reporting requirements under the 2007 waiver would supply at least some data on the latter issue regarding how the new monitoring requirements are being translated in the field, and whether that process has proven to be effective in avoiding significant impacts.

The results of these analyses would provide important information regarding which of the project alternatives would best serve the project purpose of eliminating overlapping jurisdiction on permitting while still requiring a solid program of monitoring to ensure that significant adverse impacts to water quality would be avoided. If TRPA lacks the capacity to oversee a project-by-project review and monitoring approach, or if there are problems with the current waiver's monitoring program, these issues must be discussed as part of the project's CEQA analysis. In the absence of this information, Lahontan is flying blind, without knowledge of how projects will be reviewed and monitored in the future or what types of processes have proven to be effective in the field.

**D. Lahontan's Process Results in a Segmentation of the Overall Project to Respond to the Fire Commission Recommendations And to Establish Streamlined and Effective Regulatory Oversight for Fuel Reduction Projects in the Basin.**

Both Lahontan and TRPA have provided responses about how they have implemented the Tahoe Fire Commission Recommendations, yet this overall project – the implementation of these recommendations on approximately 68,000 of fuel reductions in the Basin over the next decade –

is not addressed or analyzed as part of the proposed action.<sup>11</sup>

Under CEQA, Lahontan must consider the scope of the project broadly, *see McQueen v. Board of Directors of the Mid-peninsula Regional Open Space District* (1988) 202 Cal. App.3d 1136, 1143 ("[p]roject' is given a broad interpretation in order to maximize protection of the environment"), in order to ensure that impacts are considered at the earliest possible time, *see* Pub. Res. Code 21003.1(a); 14 Cal. Code Reg. § 15004(b), and to avoid segmenting the environmental review of a single project into different parts, thereby precluding a fully informed environmental review process from ever occurring at any one time. *See e.g. Bozung v. Local Agency Formation Com.* (1975) 13 Cal. 3d 263, 282; 14 Cal. Code Reg. § 15003(h).

Here, Lahontan has not considered the overall impacts of the following actions, all of which appear to be motivated by or are relevant to the overall project at issue, which is to establish an acceptable regulatory regime that will reduce fire risk while also ensuring protection to water quality and the environment in the Basin.

- TRPA's review of fuel reduction projects in response to Commission recommendations.
- Forest Service review of fuel reduction projects in response to same recommendations.
- TRPA and Forest Service negotiation on a new MOU.
- State Water Board and Forest Service negotiation on monitoring protocols for fuel reduction projects.
- Lahontan's proposal to amend its waiver for the entire Lahontan region.

We reiterate our concerns that the project in this case is actually much more than the transfer of regulatory authority from Lahontan and TRPA. The record shows that there are many administrative processes underway in reaction to the Angora Fire and subsequent fire risk recommendations. Yet at no point do we discern an intent on the part of any of the agencies to address the cumulative, long term impacts of these changes and subsequent implementation of projects on water quality in the Tahoe Basin. Instead, this overall project is proceeding piecemeal, in violation of CEQA.

**E. The Waiver Still Does Not Comply with the Basin Plan and Effectively Defers the Formulation of Mitigation Necessary to Meet Basin Plan Requirements and Avoid Significant Impacts under CEQA**

In our prior comments, we noted that the proposed Waiver violates the Basin Plan because

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<sup>11</sup>As discussed above, the IS/ND documents contain no discussion of how TRPA and the Forest Service intend to implement these recommendations.

it incorrectly assumes that TRPA's regulation will meet Basin Plan requirements. But this is nothing more than a hoped for result. The IS/ND cites no evidence that would support this finding.<sup>12</sup>

In its recent response to the Fire Commission recommendations, Lahontan includes many statements that in our view raise significant concerns whether Lahontan intends to retain any oversight authority over the 68,000 acres of fuel reduction projects described in the IS/ND. As discussed above, there are no conditions that accompany the proposed Waiver, no discussion of how TRPA intends to regulate fuel reduction activities and every indication that there will be little if any regulatory oversight over foreseeable future fuel reduction activities in the Basin.

As discussed in our prior comments, the 2006 Threshold Evaluation (TRPA, 2007)<sup>13</sup> showed only 25% of the threshold indicators were meeting threshold standards and water quality is one of the threshold categories that has not been successfully attained. The primary causes for the degradation of water quality are thought to be an increased flux of sediments and nutrients into the lake. Sources of nutrients and sediments have been identified including atmospheric deposition, stream loading, direct runoff, ground water, and shore zone erosion (Murphy and Knopp, 2000).<sup>14</sup> As stated in our prior comments, however, not only is TRPA presently out of compliance with its Basin wide thresholds for water quality, but there remain serious issues as to whether TRPA is adequately considering the contribution that land-based fuel reduction activities may have towards existing water quality impacts in the Basin.<sup>15</sup>

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<sup>12</sup>Lahontan's responses (p. 8) acknowledge that the Waiver "does not contain specific details on TRPA's procedural approach to fulfilling its mandate to protect water quality or on how TRPA intends to regulate vegetation activities in the future." However, the responses state that such detail is not required "to demonstrate the legal validity or environmental protectiveness of the waiver and MOU." *Id.* As set forth in these comments, we believe that this response is contrary to CEQA.

<sup>13</sup>See TRPA 2007. 2006 Threshold Evaluation Report. Stateline, NV.

<sup>14</sup>Murphy, D. D. and Knopp, C. M. 2000. Lake Tahoe watershed assessment. USDA Forest Service Pacific Southwest Station, General Technology Report PSW-GTR-175.

<sup>15</sup>As stated in our prior comments, TRPA is committed to achieving Basin Plan water quality objectives in part through the adoption of Total Maximum Daily Loads ("TMDLs"). However, Lahontan's current TMDL process assumes a particular load allocation for timber and other vegetation management activities that does not assess the potential load increases that will be caused by the 6,000 fuel reduction projects on approximately 68,000 acres over the next 10 years. Further, the current TMDL documents assume a level of protection to water quality from vegetation management activities that is based on the conditions set forth in the 2007 Waiver. However, the proposed project eliminates these conditions, including those for monitoring and protection of sensitive habitats. Thus, the current assumptions on which Lahontan and TRPA are proceeding as to how TMDLs will lead to the achievement of water quality objectives are no

However, as factual matter, the Basin is presently out of compliance with water quality thresholds set forth in the Basin Plan, and neither the Waiver, MOU or any other relevant documents demonstrates what plan TRPA has for meeting these thresholds. As set forth above and in our prior comments, the IS/ND present no information about how TRPA will meet water quality standards, including no information about how TRPA intends to review and monitor the fuel reduction projects that will be implemented as a foreseeable result of this project. This lack of information is exacerbated by the lack of any evidence to support the assumption that TRPA will regulate such projects to meet water quality standards, when in fact TRPA has *never* been able to do so in the past. How, for example, will TRPA monitoring ensure achievement of Basin Plan thresholds for pollutants currently causing impairment of the Lake's clarity standard? How will TRPA handle its regulation of Forest Service projects? As discussed above, the IS/ND contains no discussion of the implications of TRPA's current MOU with the Forest Service, or any discussion about TRPA's apparent intent to revise that MOU to allow the Forest Service more latitude in conducting fuel reduction operations without state agency oversight.

We believe that this process does not meet CEQA requirements and does not produce substantial evidence to support Lahontan's proposed finding that this project is in compliance with the Water Code. Certainly CEQA requires more than a blanket assertion that future actions must comply with legal standards to suffice as an adequate analysis of potentially significant environmental impacts.

In our view, Lahontan's approach constitutes an impermissible deferral of the specifics of a mitigation plan, which thus lacks any evidence of being potentially feasible mitigation to avoid significant impacts under CEQA. As set forth in *Gray v. County of Madera, supra*, 167 Cal. App. 4th 1099:

While we generally agree that CEQA permits a lead agency to defer specifically detailing mitigation measures as long as the lead agency commits itself to mitigation and to specific performance standards, we conclude that here the County has not committed itself to a specific performance standard. Instead, the County has committed itself to a specific mitigation goal--the replacement of water lost by neighboring landowners because of mine operations. However, this goal is not a specific performance standard such as the creation of a water supply mechanism that would place neighboring landowners in a situation substantially similar to their situation prior to the decline in the water levels of their private wells because of the mining operations, including allowing the landowners to use water in a substantially similar fashion to how they were previously using water. Moreover, the listed mitigation alternatives must be able to remedy the environmental problem.

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longer valid. This is another example of where Lahontan has failed to adequately describe the environmental/regulatory setting in claiming that this project will have no significant impacts because TRPA is required to comply with the existing Basin Plan.

*Id.* at 1117.<sup>16</sup>

Under Water Code § 13269(a)(1) any waiver must be “consistent with any applicable state or regional water quality control plan.” As stated in our prior comments, Lahontan cannot make a finding that its complete delegation of authority to TRPA of permitting authority for vegetation management activities on approximately 68,000 acres within the Tahoe Basin is consistent with the Basin Plan.<sup>17</sup>

#### **F. The Waiver is Not in the Public Interest**

We reiterate our comments that Lahontan’s proposed Waiver is not in the public interest because it transfers primary regulatory authority over projects to TRPA even though there is no evidence showing how TRPA can oversee these projects to ensure that significant adverse impacts to water quality are avoided.

In sum, Lahontan is making the commitment to enter into a waiver giving TRPA primary and lead authority over permitting fuel reduction projects in the Basin before any information has been presented as to how TRPA intends to ensure that its permitting of these projects will avoid

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<sup>16</sup>See also *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal. App. 4th 1597, 1601-1602 ([W]e note the City cannot rely upon postapproval mitigation measures adopted during the subsequent design review process”); *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal. App. 3d 872, 884 (“There cannot be meaningful scrutiny of a mitigated negative declaration when the mitigation measures are not set forth at the time of project approval”); *Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 308-309 (“By deferring environmental assessment to a future date, the conditions run counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process”); Pub. Res. Code, § 21003.1; 14 Cal. Code Reg. § 15071(c) (negative declaration under CEQA shall include any mitigation measures prior to being circulated for public review.)

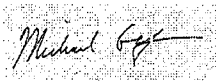
<sup>17</sup>We reiterate our prior comments that TRPA has conducted no analysis of the effects that permitting 68,000 acres of vegetation management activities will have on its ability to meet its threshold goals. To the extent TRPA is just beginning to consider this process, TRPA is not currently in compliance with its own threshold requirements. We reiterate our prior comments that it is not in the public interest for Lahontan to give up primary regulatory authority over fuel reduction projects without specific direction as to how critical Basin resources will be protected or updated thresholds pertaining to these resources. We continue to question why Lahontan believes it can make this finding where TRPA has no plan in place for meeting its Basin Plan requirements nor how it will be reviewing or monitoring the fuel reduction projects that are subject to the proposed Waiver/MOU.

significant impacts on the environment. As discussed above, this approach is not in the public interest and, as discussed above, violates CEQA.

### **III. CONCLUSION**

We reiterate our concern that Lahontan appears to be reacting to political pressure to dispense with its traditional and legally required authority over projects that have the potential to take us further away from the attainment of water quality objectives for the Basin. In addition, as discussed in our prior comments and above, the project as proposed is contrary to law. We thus ask that the Board consider our comments and not approve the proposed Waiver/MOU and instead work with staff and TRPA to come up with a more protective - and informed - working arrangement to ensure that the precious environmental values in the Basin are preserved.

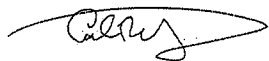
Sincerely,



**Michael Graf**  
**Sierra Forest Legacy**



**Jennifer Quashnick**  
**Sierra Forest Legacy -Tahoe Area Sierra Club**



**Carl Young/FS**  
**League to Save Lake Tahoe**



**Michael Donahoe**  
**Tahoe Area Sierra Club**



CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LAHONTAN REGION

RESOLUTION NO. R6T-2008-0038

**WAIVER OF FILING A REPORT OF WASTE DISCHARGE AND WAIVER OF WASTE  
DISCHARGE REQUIREMENTS FOR VEGETATION MANAGEMENT ACTIVITIES  
REGULATED BY THE TAHOE REGIONAL PLANNING AGENCY  
AND  
AUTHORIZING THE LAHONTAN WATER BOARD'S EXECUTIVE OFFICER TO  
ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE TRPA**

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INTRODUCTION

This resolution waives the need for proponents of vegetation management activities in the Lake Tahoe Basin to apply for or receive timber harvest or vegetation management permits from the California Regional Water Quality Control Board, Lahontan Region, (Water Board), before initiating work on their project. In order to take advantage of this waiver of filing a report of waste discharge (i.e., project application) with the Water Board or receiving waste discharge requirements (i.e., permit) from the Water Board, the project must be regulated by the Tahoe Regional Planning Agency (see Waiver and Conditions, paragraph 1, of this Resolution) under any of its authorizations (e.g., exempt, qualified exempt, or tree removal permits) and the project must not cause a significant adverse effect to the environment that cannot be mitigated to a level of insignificance (see Waiver and Conditions, paragraph 2, of this Resolution).

This waiver applies to the California portion of the Lake Tahoe Basin under mutual jurisdiction of the Water Board and the TRPA. The Lake Tahoe Basin includes lands in El Dorado and Placer Counties, California, which are tributary to Lake Tahoe. The California portion under the jurisdiction of both the TRPA and the Water Board does not include the Alpine County portion of the Lake Tahoe watershed, but does include part of the Truckee River Hydrologic Unit, between the Lake Tahoe outlet dam and the Bear Creek confluence.

FINDINGS

WHEREAS, the California Regional Water Quality Control Board, Lahontan Region, (Water Board) finds:

- A. California Governor Arnold Schwarzenegger issued a Proclamation strongly encouraging the Lahontan Water Board and the TRPA to take expedited action to implement the recommendations of the California-Nevada Tahoe Basin Fire Commission that relate to the Lahontan Water Board and the TRPA.

- B. The California-Nevada Tahoe Basin Fire Commission Report of May 2008 recommended the Governor of the state of California direct, within the framework of his legal authority, the Water Board to transfer to TRPA no later than October 1, 2008, by a suitable Memorandum of Understanding (MOU), all responsibility of the Water Board relating to fuel reduction projects performed within the Lake Tahoe Basin. The intent is to have an expedited single permitting process, eliminating the need for the Water Board to issue a second permit, and to achieve consistency in the application of environmental laws as it relates to these kinds of projects in the Lake Tahoe Basin.
- C. The Water Board and TRPA recognize that areas of overlapping authority and regulatory effort exist in the operations of the two agencies, and that it will be mutually beneficial to the Water Board, TRPA, and the regulated community to avoid unnecessary duplicative regulation.
- D. The Water Board and TRPA have developed a streamlined, cooperative approach toward effective regulation of vegetation management activities in the Lake Tahoe Basin by entering into a MOU designating the TRPA as the agency responsible for review and permitting vegetation management projects.
- E. Lake Tahoe is a designated Outstanding National Resource Water whose quality and beneficial uses are threatened by sediment, nutrient, and other pollutant loading from a variety of sources. Control of these sources is of major interest to the States of California and Nevada and the federal government.
- F. The Water Board is an agency of the state of California, empowered by the federal Clean Water Act, the Porter-Cologne Water Quality Control Act, and other federal and state laws to set water quality standards and to regulate activities in the California portion of the Lake Tahoe Basin which may have an adverse effect on water quality.
- G. TRPA is required by the Tahoe Regional Planning Compact (P.L. 96-551, 94 Stat. 3233, Cal. Govt. Code 66801; NRS 277.200) to regulate activities within the Lake Tahoe Region, which may have a substantial effect on natural resources of the Region. To protect these resources, the Compact directs TRPA to establish and ensure attainment of environmental standards, including water quality, soil conservation, and fisheries.
- H. The TRPA is the designated water quality planning agency under Section 208 of the Clean Water Act. The TRPA's "208 Plan" was certified by the states of California and Nevada and the USEPA, and establishes control measures to protect water quality including a tree removal permit system, stream environment zone and wetland protection policies, vegetation protection and management provisions, prohibitions against fill in 100-year floodplains, and use of Best Management Practices (BMPs). The TRPA's Regional Plan also provides for attaining and

maintaining the strictest water quality standards established by federal or state agencies as required by Article 5, section 5(d) P.L. 96-551, and the TRPA Code of Ordinances incorporates water quality standards as equally restrictive as those contained in the Water Quality Control Plan for the Lahontan Region (Lahontan Basin Plan).

- I. California Water Code Section 13260(a) requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the State, other than to a community sewer system, shall file with the appropriate Water Board a report of waste discharge (ROWD) containing such information and data as may be required by the Water Board.
- J. The Water Board has a statutory obligation to prescribe waste discharge requirements, except where the Water Board determines, after any necessary regional board meeting, that a waiver of waste discharge requirements for a specific type of discharge is consistent with any applicable state or regional water quality control plan and is in the public interest pursuant to California Water Code Section 13269.
- K. California Water Code Section 13269 includes the following provisions:
  - a. A waiver may not exceed five years in duration, but may be renewed by the regional board.
  - b. The waiver shall be conditional and may be terminated at any time by the regional board.
  - c. The conditions of the waiver shall include, but need not be limited to, the performance of individual, group, or watershed-based monitoring, except the regional board may waive the monitoring requirements described in this subdivision for discharges that it determines do not pose a significant threat to water quality.
  - d. Monitoring requirements shall be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions.
  - e. In establishing monitoring requirements, the regional board may consider the volume, duration, frequency, and constituents of the discharge; the extent and type of existing monitoring activities, including, but not limited to, existing watershed-based, compliance, and effectiveness monitoring efforts; the size of the project area; and other relevant factors.
  - f. Monitoring results must be made available to the public.
  - g. The Water Board may include as a condition of a waiver the payment of an annual fee established by the State Water Resources Control Board (State Water Board). At the time of this hearing, the State Water Board has not established annual fee regulations with respect to vegetation management activities.

- L. The Water Board finds that waiving the filing of a ROWD and waste discharge requirements for the following types of vegetation management activities within the area of mutual jurisdiction of the TRPA and the Lahontan Water Board is in the public interest when such activities are effectively regulated by the TRPA:

Activities related to the management of vegetation for the purposes of:

- a. fuel reduction;
- b. forest thinning;
- c. environmental improvement (such as forest enhancement, riparian enhancement, and aspen stand enhancement);
- d. burned area rehabilitation;
- e. hazard tree removal;
- f. site preparation that involves disturbance of soil, burning of vegetation, or herbicide/pesticide application; or
- g. cutting or removal of trees and vegetation, together with all the work incidental thereto, including, but not limited to, construction, reconstruction, maintenance and decommissioning of roads, fuel breaks, stream crossings, landings, skid trails, or beds for the falling of trees;
- h. prescribed burning.

Vegetation management activities do not include aquatic vegetation management, preparatory tree marking, surveying, or road flagging.

- M. The Water Board finds that waiving the filing of a report of waste discharge and/or waste discharge requirements for the categories of projects listed above would enable Water Board staff to use its resources effectively and to reduce duplicative regulatory requirements.
- N. Water Board staff has prepared a Negative Declaration in accordance with the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) and state guidelines, and the Water Board has considered the Negative Declaration and determined there will be no significant adverse impacts to the environment from the waiver of filing a report of waste discharge and/or waste discharge requirements for the categories of projects specified herein that are regulated by the TRPA.
- O. The Water Board held a hearing on December 11, 2008 in South Lake Tahoe and considered all evidence concerning this matter.

**THEREFORE BE IT RESOLVED:**

**WAIVER AND CONDITIONS**

1. The Water Board waives the filing of a report of waste discharge and/or waste discharge requirements for all vegetation management activities and discharges


(except for those projects identified in paragraph 2 below) in the areas of the mutual jurisdiction of the TRPA and the Water Board if these activities are regulated by the TRPA.

2. The Water Board does **not** waive the filing of a report of waste discharge and waste discharge requirements for vegetation management activities with impacts that cannot be mitigated to less than significant levels. Such impacts are those identified in a California Environmental Quality Act environmental impact report, or a National Environmental Policy Act or TRPA environmental impact statement. Activities that cause such impacts were not considered in the Negative Declaration that the Water Board prepared as part of this action. Therefore, this waiver is not applicable to these activities unless a regulatory agency imposes conditions or requirements such that the impacts are mitigated to less than significant levels.
3. While very unlikely, some components of projects covered by this waiver of waste discharge requirements may be subject to regulation under Clean Water Act section 404 or any other federal permit or subject to a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act as a silvicultural point source as defined in 40 Code of Federal Regulations (CFR) section 122.27. This waiver is not a substitute for state water quality certification under section 401 of the federal Clean Water Act which is needed if a federal Clean Water Act section 404 is needed. Additionally, this waiver is not a substitute for an NPDES permit, should one be needed.
4. This waiver requires compliance with the Lahontan Basin Plan, TRPA's Regional Plan, and prohibits the creation of a pollution or nuisance.
5. This action waiving the filing of a report of waste discharge and waste discharge requirements is conditional as outlined in paragraphs 1 through 4, above, and the Executive Officer can recommend the Water Board adopt waste discharge requirements for any of the specific types of vegetation management activities or discharges, or any individual vegetation management activity or discharge, identified in Finding L above.

#### MOU AUTHORIZATION AND NEGATIVE DECLARATION CERTIFICATION

6. The Water Board authorizes and directs the Executive Officer to enter into a Memorandum of Understanding with the TRPA which describes the relationship between the Water Board and TRPA related to regulation projects subject to the waiver in paragraph 1 above. The Executive Officer is authorized to approve non-substantive changes in the MOU.
7. The Water Board certifies the Negative Declaration for this waiver and directs the Executive Officer to file all appropriate notices.

I, Harold J. Singer, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Lahontan Region, on December 11, 2008.

  
HAROLD J. SINGER  
EXECUTIVE OFFICER

MEMORANDUM OF UNDERSTANDING BETWEEN THE  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LAHONTAN  
REGION, AND THE TAHOE REGIONAL PLANNING AGENCY

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for  
VEGETATION MANAGEMENT

INTRODUCTION

This Memorandum of Understanding (MOU) describes the roles and relationships between the Tahoe Regional Planning Agency (TRPA) and the California Regional Water Quality Control Board, Lahontan Region (Water Board) in regulating vegetation management activities in the area of the Lake Tahoe Basin under mutual jurisdiction of both agencies. The Water Board also adopted a waiver that exempts project proponents in the Lake Tahoe Basin from the need to apply for or receive timber harvest or vegetation management permits from the Water Board when such projects are regulated by the TRPA under this MOU.

The waiver is a separate document that provides the basis and conditions for the Water Board's reliance on the TRPA for permitting and review of vegetation management activities. Project proponents should review the waiver, titled *Waiver of Filing a Report of Waste Discharge and Waiver of Waste Discharge Requirements for Vegetation Management Activities Regulated by the Tahoe Regional Planning Agency*, available at <http://www.waterboards.ca.gov/lahontan/>.

The MOU and waiver apply to the California portion of the Lake Tahoe Basin under mutual jurisdiction of the Water Board and the TRPA. The Lake Tahoe Basin includes lands in El Dorado and Placer Counties, California, which are tributary to Lake Tahoe. The California portion under the jurisdiction of both the TRPA and the Water Board does not include the Alpine County portion of the Lake Tahoe watershed, but does include part of the Truckee River Hydrologic Unit, between the Lake Tahoe outlet dam and the Bear Creek confluence.

FINDINGS

WHEREAS, the California Regional Water Quality Control Board, Lahontan Region (Water Board), through direction to the Water Board Executive Officer, and the Tahoe Regional Planning Agency (TRPA) Governing Body, through direction to the TRPA Executive Director, have agreed to enter into this Vegetation Management Memorandum of Understanding (MOU); and

WHEREAS, California Governor Arnold Schwarzenegger issued a Proclamation strongly encouraging the Water Board and the TRPA to take expedited action to implement the recommendations of the California-Nevada Tahoe Basin Fire Commission; and

WHEREAS, the California-Nevada Tahoe Basin Fire Commission Report of May 2008 recommended the Governor of the State of California direct, within the framework of his legal authority, the Water Board to transfer to TRPA no later than October 1, 2008, by a suitable MOU, all responsibility of the Water Board relating to fuel reduction projects performed within the Lake Tahoe Basin. The intent is to have an expedited single permitting process, eliminating the need for the Water Board to issue a second permit, and to achieve consistency in the application of environmental laws as it relates to these kinds of projects in the Lake Tahoe Basin; and

WHEREAS, Lake Tahoe is a designated Outstanding National Resource Water whose quality and beneficial uses are threatened by sediment, nutrient, and other pollutant loading from a variety of sources. Control of these sources is of major interest to the States of California and Nevada and the federal government; and

WHEREAS, the Water Board is an agency of the State of California, empowered by the federal Clean Water Act, the Porter-Cologne Water Quality Control Act, and other federal and state laws to set water quality standards and to regulate activities in the California portion of the Lake Tahoe Basin which may have an adverse effect on water quality; and

WHEREAS, TRPA is required by the Tahoe Regional Planning Compact (P.L. 96-551, 94 Stat. 3233, Cal. Govt. Code section 66801 et seq.; NRS 277.200 et seq.) to regulate activities within the Lake Tahoe Region, which may have a substantial effect on natural resources of the Region. To protect these resources, the Compact directs TRPA to establish and ensure attainment of environmental standards for water quality, air quality, noise, recreation, soil conservation, wildlife habitat, vegetation preservation, scenic quality, and fisheries. The Compact also directs TRPA to define which activities are exempt from TRPA review and approval. TRPA defines exempt activities in Chapter 4 of its Code of Ordinances; and

WHEREAS, the Water Board and TRPA are both responsible for implementing the bi-state Water Quality Management Plan for the Lake Tahoe Region ("208 Plan") and TRPA is recognized as one of the implementing agencies for certain California Water Quality Control Plan provisions applicable to the Lake Tahoe Basin. These provisions require compliance with water quality standards and the installation of BMPs for the control of erosion and stormwater on all improved properties in the California portion of the Lake Tahoe Basin, and prohibit disturbance of Stream Environment Zones (SEZs), with limited exceptions; and

WHEREAS, the Water Board and TRPA are interested in developing a streamlined, cooperative approach toward regulating vegetation management activities in the Lake Tahoe Basin; and



WHEREAS, the Water Board and TRPA recognize that areas of overlapping authority and regulatory effort exist in the operations of the two agencies, and that it will be mutually beneficial to the Water Board, TRPA, and the regulated community to avoid unnecessary duplicative regulation, and

WHEREAS, "vegetation management activities" include all activities related to the management of vegetation for the purposes of fuel reduction; forest thinning; and/or environmental improvement (such as forest enhancement, riparian enhancement, and aspen stand enhancement); prescribed burning; cutting or removal of trees and vegetation, together with all the work incidental thereto, including, but not limited to, construction, reconstruction, maintenance, and decommissioning of roads, fuel breaks, stream crossings, landings, skid trails, or beds for the falling of trees; burned area rehabilitation, hazard tree removal; site preparation that involves disturbance of soil, burning of vegetation, or herbicide/pesticide application. Vegetation management activities do not include aquatic vegetation management, preparatory tree marking, surveying, or road flagging; and

WHEREAS, the Water Board finds that this MOU provides assurance that vegetation management activities conducted in the California portion of the Lake Tahoe Basin will be permitted by the TRPA in a manner that is protective of water quality such that separate permitting by the Water Board will not be necessary. Therefore, this MOU provides the basis for the Water Board to adopt a waiver of the need to file a report of waste discharge and/or receive waste discharge requirements for discharges associated with vegetation management activities regulated by TRPA.

### AGREEMENTS

NOW THEREFORE, the Water Board and TRPA agree as follows:

#### Review and Permitting

1. TRPA will have responsibility for reviewing vegetation management activity proposals, issuing permits as appropriate, conducting inspections, and taking enforcement action as necessary to ensure compliance with permits and applicable regulations. This includes exempt and qualified exempt activities, as defined in the TRPA Code of Ordinances.
2. TRPA, as the agency responsible for project review and permitting, may request that the Water Board assume responsibility for permitting specific projects or provide assistance to TRPA for any actions described in Paragraph No. 1 above due to staff resource limitations, project complexity or other similar situations. The primary goal of any transfer of responsibility is to ensure timely permitting of projects.

3. The agency issuing a permit for the vegetation management activity, whether TRPA or the Water Board, will be solely responsible for approval of exemptions to prohibitions related to SEZ disturbance. ~~Granting of such exemptions will not be delegated to an agency not a party to this MOU.~~ Exemptions shall be considered in accordance with the TRPA Code of Ordinances or the Water Quality Control Plan for the Lahontan Region (Basin Plan), depending on the agency issuing the permit.
4. The agency issuing a permit to conduct vegetation management activities will conduct any required pre-project and final inspections, and will be responsible for granting a variance to the October 15 – May 1 soil disturbance prohibition period, if applicable.
5. This MOU does not cover vegetation management projects with impacts that cannot be mitigated to less than significant levels. Such impacts are those identified in a California Environmental Quality Act environmental impact report, or a National Environmental Policy Act or TRPA environmental impact statement. If another regulatory agency imposes conditions or requirements such that the impacts are mitigated to less than significant levels, then the project may proceed under the provisions of this MOU.

#### **Notification and Coordination**

6. Consistent with the provisions of Paragraph No. 2 above, TRPA will notify and may consult the Water Board, during the application review period for vegetation management activities that propose any one or more of the following items:
  - a) Permanent crossings bridging a perennial reach of a watercourse.
  - b) Temporary "wet" crossings (vehicles crossing through a channel when water is present).
  - c) Herbicide/pesticide use, excluding use of Borax/Sporax.
  - d) New permanent road construction over 3,000 linear feet, temporary road construction that will not be decommissioned prior to October 15 of each year.
  - e) Treatment areas of more than five hundred (500) total acres or one hundred (100) acres of verified stream environment zone lands.
  - f) Equipment operations on slopes over 30 percent.

Such consultation may include, but not be limited to, technology sharing, and discussion of Best Management Practices and appropriate control and mitigation measures as represented through the permit conditions. Consultation activities will occur in a manner that does not alter the normal permitting time that the lead permitting agency is committed to follow and

lack of timely response by the other agency will not delay project permitting.

7. TRPA and the Water Board shall notify each other within five (5) business days of confirming that any person or entity has violated the terms of any permit or project authorization or violated other applicable rules governing vegetation management activities, as covered in the TRPA Code of Ordinances or in the Water Board's Basin Plan.
8. By February 1 of each year, each agency must submit to the other agency a list of all vegetation management activities which that agency authorized to proceed under this MOU during the preceding calendar year (January through December), and provide, as appropriate, activity details including, but not limited to: project proponent, project location, and any compliance issues associated with the project. The list of projects maintained by the Tahoe Fire and Fuels Team can be used to satisfy this provision. TRPA and Lahontan will meet at least semi-annually to review, at a programmatic level, activities and actions taken pursuant to this MOU.

#### **Dispute Resolution Procedures**

9. Any dispute between TRPA and the Water Board over the interpretation or implementation of this MOU, including but not limited to implementation of the actions covered by this MOU, shall be resolved expeditiously and at the lowest staff level possible. However, if a dispute cannot be resolved by the Water Board executive officer and the TRPA executive director, each agency is free to proceed with actions it believes are appropriate and legal.

#### **General Provisions**

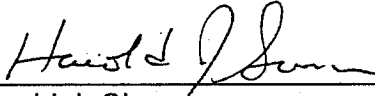
10. Nothing in this MOU shall be construed to limit the authority of either the Water Board or TRPA to ensure compliance with its environmental standards and regulations or to take enforcement action.
11. This MOU is strictly between TRPA and the Water Board for the mutual jurisdictional area in the state of California and cannot be superseded by a different MOU or other agreement with a different person or entity.
12. Staff of the Water Board and TRPA shall cooperatively provide training, technical review, and comments to each other, as appropriate, and shall discuss, on at least a semi-annual basis, any issues, problems, and opportunities encountered during administration and implementation of this MOU.

13. A staff person and an alternate from each agency shall be designated as the liaison for the implementation of this MOU. Each agency must dedicate staff to adequately implement the provisions of this MOU.

14. This MOU takes effect upon the signature of the Water Board executive officer and the TRPA executive director and remains in effect until terminated. This MOU may be amended upon written request of either the TRPA or Water Board and the subsequent written concurrence of the other. Either the TRPA or Water Board may terminate this MOU with a 60-day written notice to the other. Both TRPA and the Water Board hereby agree to cooperate in good faith to carry out the provisions of this MOU to achieve the objectives set forth herein.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LAHONTAN REGION

Dated: December 15, 2008

  
Harold J. Singer  
Executive Officer

TAHOE REGIONAL PLANNING AGENCY

Dated: 1-5-2009

  
John Singlaub  
Executive Director